

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

October 16, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 27, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am contacting you based on a conversation I had with NAME, Revenue Auditor. I am representing a client who is a construction contractor in Illinois. Our client uses tangible personal property during the installation process, which is converted into real property due to the installation of the equipment into buildings. We have recently discovered that they are charging sales tax to their customers on the equipment charges for the materials used in the installation instead of paying sales/use tax when they purchase the equipment from their vendors. NAME has informed me that this issue is currently being addressed by the Board of Appeals relating to carpet installers in the Chicago area who are also charging sales tax to their customers instead of paying sales/use tax when they purchase the carpeting.

For the taxpayer's year ended December 31, 2000, they purchased \$1,496,675 of materials that were used during the installation process. The taxpayer has contracts with entities that are exempt from sales tax. However, assuming all of the purchases would be subject to tax, the liability for 2000 would be \$101,026. Our concern is that if the taxpayer would be audited for sales tax, the Department would assess tax on all of the purchases the taxpayer had made even though the taxpayer charged sales tax to their customers. Further, we understand that the taxpayer could receive the sales tax that they collected back from the Department; however, they would then be required to return the refunded sales tax to their customers, who in turn would not be likely to remit the funds back to the taxpayer as an additional sales amount. If the taxpayer is required to pay sales tax on its purchases, the taxpayer would most likely go out of business, as they do not have the funds to pay the sales tax.

The taxpayer's staff believed that they were properly collecting sales tax from their customers and did not realize until recently that this was incorrect. Further, the

taxpayer desires to change its sales tax procedures to comply with Illinois law. We are requesting on behalf of the taxpayer that an agreement between the Illinois Department of Revenue and the taxpayer is made whereby the taxpayer will correctly pay sales/use tax on its purchases for all future contracts and that the Department will not assess sales/use tax on the prior contracts. The taxpayer is requesting this agreement for the following reasons. First, the taxpayer believed that they were properly collecting and remitting sales tax. Second, the State of Illinois has received more in sales tax than it should have. Third, the taxpayer enters a bid for each contract. The contract price includes the charge for sales tax. Therefore, the taxpayer's customers have, in their point of view, still paid the same amount for the job if the sales tax would have been paid by the taxpayer on the equipment it purchased instead of being collected from them. Fourth, if the taxpayer is required to pay the sales/use tax on the prior purchases, the taxpayer will in most likelihood be forced out of business. Finally, the taxpayer has come forth on their own without being contacted by the Department, as they want to properly comply with the law.

Based on the above reasons, we are requesting that the Department agree to not assess sales/use tax on the equipment purchases by the taxpayer for the contracts in which the taxpayer charged its customers sales tax instead of paying sales/use tax on their purchases. We will provide any additional information you will require in order for you to determine if an agreement can be entered with the taxpayer.

Please contact me with any questions you may have.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.